IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1466 OF 2007

Maratha Sahayak Mandal ..Appellant.
Vs.
Municipal Corporation of Greater Bombay..Respondent.

Mr.Y.S.Jahagirdar i/b M/s.S.M.Associates, adv. for the Appellant.
Mr.Xavier, adv. for the Respondent No.1.
Mr.S.K.Mali, adv. for the Respondent No.2.

CORAM : J.H.BHATIA, J.
DATE : AUGUST 3, 2007.

P.C.

1. Heard the learned counsel for the Parties.

2. The appellant, who is original plaintiff, sought declaration that the notice dated 10-7-2002 issued by the respondent no.1 Municipal Corporation for demolition of unauthorised structure on the terrace of the building was bad in law and unenforceable. According to the appellant, it had taken up the property on lease from the respondent no.2 and at the time of taking the property on lease, there was already structure on the terrace of the building and alongwith the structure, the terrace was taken on lease. This was denied by the respondents. According to the respondents , neither there was any sanction for raising such structure on the terrace of the building

nor such a structure was raised by the respondent no.2/landlord. After hearing the evidence of both the parties, the learned trial Court dismissed the suit vide the judgment dated 26-6-2006.

3. Copy of the Sale Deed dated 19th July, 1984 executed by the earlier owner of the property in favour of the respondent no.2 reveals that it was consisting of ground and first floors and the open terrace. The plaintiff/appellant has not produced any document to show that when the property was leased by the respondent no.2 to the appellant, there was any such structure on that terrace. On the other hand, the learned counsel for the respondent no.2 has pointed out a receipt issued by the respondent no.2 in favour of the appellant on 10-11-1985 about payment of rent, which clearly shows that the property leased out was the eastern terrace and not any other part of the property. It is contended that the open terrace was leased out to the appellant only for holding the meetings of the appellant monthly. There is no material to show that the structure on the said terrace was in existence when the terrace was taken on lease by the appellant nor there was any material to show that Municipal Corporation had sanctioned such a structure. In view of this, I find no substance in the appeal.

4. Therefore, appeal stands dismissed summarily.

5. At this stage Mr.Jahagirdar the learned counsel for the appellant makes a statement that the appellant shall move the respondent no.1 Corporation, with consent of the respondent no.2, within four weeks for regularisation of the said structure and, therefore, interim relief against demolition may be continued for a period of four weeks . It may be made clear that the learned counsel for the respondents do not give any consent for this. However, demolition itself will take sometime and if the law permits regularisation, demolition may be stayed for a further period of four weeks. Therefore, interim stay against the demolition shall continue for a further period of four weeks so that the appellant may make an appropriate application if the law permits. Observations made in this order are only for the purpose of deciding this appeal and will not come in the way of appellant in some suit pending between the parties before the Small Causes Court.

[J.H.BHATIA, J.]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.3763 OF 2006
IN
FIRST APPEAL NO.1466 OF 2007

Maratha Sahayak Mandal ..Applicant.
Vs.
Municipal Corporation of Greater Bombay..Respondent.

Mr.Y.S.Jahagirdar i/b M/s.S.M.Associates, adv. for the Applicant.
Mr.Xavier, adv. for the Respondent No.1.
Mr.S.K.Mali, adv. for the Respondent No.2.

CORAM : J.H.BHATIA, J.
DATE : AUGUST 3, 2007.

P.C.

1. Heard the learned counsel for the Parties.

2. As the appeal itself has been dismissed, the application does not survive and stands disposed off.

(J.H.BHATIA, J.)